

REMARKS

Claims 1-6, 8-10 and 12-32 are pending in the application. Claims 7 and 11 have been canceled.

Claims 1 and 23 have been amended to clarify that the gum base compositions comprise about 0.02% to about 40% by weight structured triacylglycerols that include short and long chain acyl triglyceride molecules. Support for the amendment can be found at page 6, line 22.

Claims 9 and 31 have been amended to clarify that the gum formulations comprise about 0.01% to about 10% by weight structured triacylglycerols that include short and long chain acyl triglyceride molecules. Support for this amendment can be found at page 7, lines 1-2.

Claim 21 has been amended to clarify that the method for reducing caloric content comprises substituting structured triacylglycerols that include short and long chain acyl triglyceride molecules in the formulation in a concentration of from about 0.1% to about 10% by weight in place of a portion of the fats/oils. Support for this amendment can be found at page 2 line 21 and page 7 lines 1-2.

Claims 1-17 and 21-32 stand rejected under 35 U.S.C. 103 as obvious over *Wheeler et al* (US Patent 5,258,197). The Office action took the position that *Wheeler* discloses a chewing gum containing a plasticizer which can be a structured triacylglycerol prepared by esterfying triacetin, tripropionin with various long chain fatty acid sources and that the disclosed triacylglycerols can partially or fully replace the synthetic or natural fat in chewing gum. Applicant respectfully requests that rejection be reconsidered and withdrawn for the following reasons.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second there must be a reasonable expectation of success. Finally, all of the claim limitations must be taught or suggested by the prior art.

Of the rejected claims only Claims 1, 9, 21, 23 and 31 are independent. With respect to Claims 1 and 23, *Wheeler* fails to disclose gum bases containing about 0.02% to about 40% by weight of the structured triacylglycerols that include short and long chain acyl triglyceride molecules. With respect to Claims 9 and 31 *Wheeler* fails to disclose gum formulations

containing about 0.01% to about 10% by weight of the structured triacylglycerols that include short and long chain triacylglyceride molecules. With respect to Claim 21, *Wheeler* fails to disclose substituting triacylglycerols that include short and long chain acyl triglyceride molecules in the formulation in a concentration of from about 0.1% to about 10% by weight in place of a portion of fats/oils. In fact, other than *Wheeler's* passing reference to the use of its reduced calorie triglyceride mixtures in gum at Column 14, line 29 and Column 13, line 50, *Wheeler* contains no other disclosure relating to the use of its triacylglycerides in gum. Thus, *Wheeler* provides no motivation that would lead one of skill in the art to incorporate any specific quantity of its triglycerides in a suitable gum formulation or gum product, nor does *Wheeler* provide any disclosure or guidance as to how gum products incorporating *Wheeler* triacylglycerides could be produced. Therefore, Applicants submit that Claims 1, 9, 21, 23 and 31 are not obvious and are patentable over *Wheeler*. Further, Claims 2-6, 8, 10, 12-17, 22, and 24-30 and 32, which depend from these claims, are nonobvious and patentable at least for the same reasons.

Claims 18-20 were rejected as unpatentable under 35 U.S.C. 103(a) as obvious over *Grey et al* (US Patent 5,192,562) in view of *Wheeler et al* (US Patent 5,258,197). The Office action took the position that *Grey* describes gum formulations that comprise PVA, fat and elastomers, including triglycerides and lecithin and that *Wheeler* discloses substituting its triacylglycerols for synthetic or natural fat in food products. Applicant submits that the rejection should be withdrawn for the following reasons.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference or references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, all of the claim limitations must be taught or suggested by the prior art.

Applicants submit that in this case the references do not provide the requisite suggestion or motivation to modify *Grey* with the teaching of *Wheeler* in a way that would provide, with any reasonable expectation of success, the present invention. *Grey* is concerned with a method of manufacturing a chewing gum that involves mixing an amount of a low fat gum base or non-tack gum base having a premix temperature of about 200-240 °F with a high fat and oil (HFO)

gum base having a temperature of about 60-80 °F. Col. 1, lines 31-38. The method is said to result in a more complete incorporation of the HFO gum base in the final gum product. The process results in a product having the desirable nontack properties of HFO gums and the desirable texture, stability, and flavor properties of chewing gums incorporating conventional low fat bases.

Applicant submits that it is not clear from the references how the *Wheeler* triacylglycerides could be combined with *Grey* such that the advantages described in *Grey* would be obtained. It simply is not clear that the *Wheeler* triacylglycerides could be combined with either an HFO gum base or a low fat gum base or both and the gum bases mixed, as in *Grey*, to obtain a product having *Grey*'s advantages. More specifically, there is nothing to indicate that the *Wheeler* triglycerides could be substituted into the *Grey* HFO gum base component and that, when mixed with the *Grey* low fat gum base, a gum product would be produced that has the desirable nontack properties typical of HFO gums, as in *Grey*. Nor is there any suggestion that the *Wheeler* triglycerides could be substituted into the *Grey* low fat gum base and that, when mixed with the *Grey* HFO gum base, a gum product would be produced that has the desirable texture, stability, and flavor properties typical of low fat gums, as in *Grey*. In summary, there is nothing in the references to indicate that the advantages in *Grey* would exist if the modifications suggested in the Office action were made. Thus, Applicants submit that there would be no motivation nor any expectation of success in modifying *Grey* with the teaching of *Wheeler* and therefore the combination is improper. Therefore, Applicants submit that Claims 18 and its dependent claims 19-20 which contain all of the Claim 18 limitations are not obvious and are patentable over *Grey* in view of *Wheeler*.

In light of the foregoing comments, the Applicants respectfully submit that the application is in condition for allowance and request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: November 3, 2004